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IN THE

Supreme Court of the United States

October Term, 1953.

No. 297.

FRANK B. WATSON, JR.,
Petitioner,

v.

SINCLAIR REFINING COMPANY, a Corporation,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA AND BRIEF IN SUPPORT THEREOF.

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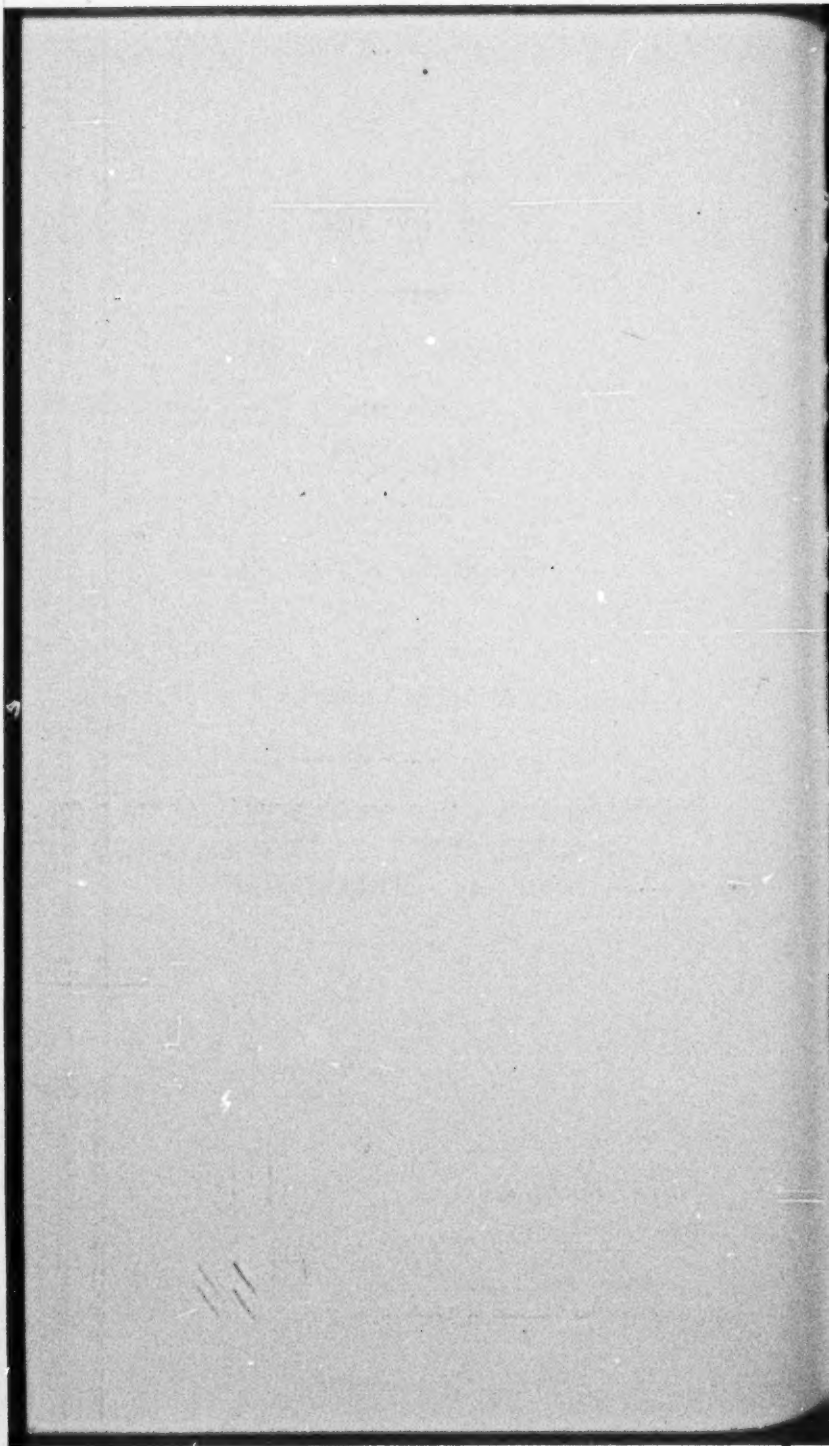

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OCTOBER TERM, A. D. 1953

No.

FRANK B. WATSON, JR.,

Petitioner,

v.

SINCLAIR REFINING COMPANY, A CORPORATION,

Respondent.

To the Honorable the Supreme Court of the United States:

You petitioner, FRANK B. WATSON, JR., respectfully represents:

I.

Summary and Short Statement of the Matter Involved.

On June 2, 1950, petitioner, FRANK B. WATSON, JR., instituted a suit in chancery in the Florida State Court against the respondent, SINCLAIR REFINING COMPANY, a corporation, and others, in which the petitioner sought a decree cancelling a covenant contained in deeds in the chain of title to certain real property owned by the petitioner, which covenant unreasonably restricted petitioner's use of his real property. The SINCLAIR REFINING COMPANY answered the suit and in its answer contended that as the adjoining property owner it had acquired title to the petitioner's property by adverse possession and further that it owned an easement across petitioner's property. Pursuant to the court rules in such cases made and provided, SINCLAIR REFINING COMPANY sought the rendition of a final decree upon

the pleadings. The petitioner countered with an application for a final decree. The Circuit Court (a court of general jurisdiction in Florida) rendered a final decree in favor of the petitioner and against the contentions of the SINCLAIR REFINING COMPANY. It held that the SINCLAIR REFINING COMPANY had not acquired title by adverse possession and did not possess an easement across petitioner's property.

Under the statutes and rules of court of the State of Florida, this decree became final twenty days after its rendition and the trial court, upon the expiration of the twenty days, lost all jurisdictional power to modify or change the decree. A change, if any, could only be effected by the Supreme Court of Florida upon an appeal.

SINCLAIR REFINING COMPANY appealed the cause to the Supreme Court of Florida and that court affirmed the lower court by its opinion and mandate rendered on the 11th day of December, 1951, at the June Term, A. D. 1951. Thereafter, petition for rehearing was denied by the Supreme Court of Florida and the term at which the opinion and decision was rendered expired. Under the laws of Florida, the Supreme Court of Florida lost all jurisdictional power to modify or change its opinion and adjudication.

The lower court, in its final decree (affirmed by the Supreme Court of Florida), reserved jurisdiction of the cause for the sole purpose of determining whether or not the *general public* had a claim or interest in, upon or over the petitioner's property. Upon the trial of this issue, the court concluded that the public had no such right and rendered an order so holding. The SINCLAIR REFINING COMPANY, although not interested in this phase of the litigation, appealed this order supplemental to final decree to the Supreme Court of Florida. Upon that appeal, the petitioner made a motion to dismiss the appeal upon the ground that the former opinion and judgment of the Supreme Court of Florida had decided the questions raised by the respondent's assignments of error. This motion was denied. How-

ever, the Supreme Court of Florida of its own motion struck all the pertinent assignments of error of the SINCLAIR REFINING COMPANY and held that its former opinion controlled the questions raised by such assignments of error.

Thereafter, the Supreme Court of Florida rendered its opinion and decision in which it held that the SINCLAIR REFINING COMPANY owned and possessed a private easement over and across the petitioner's property by virtue of said covenant. Moreover, its first judgment fixed and defined the exact issue to be tried for a determination of the question of whether the public had or owned a right of way over petitioner's property. In the subsequent judgment after the trial of this issue, the Supreme Court of Florida concluded that the issue should have been different; notwithstanding, it failed to afford the petitioner a trial upon this second or substituted issue. Petitioner filed a petition for rehearing in which it pointed out that the Supreme Court of Florida under the laws of the State of Florida was without jurisdictional power to modify, revoke, or change its prior and former judgment in which the rights of the SINCLAIR REFINING COMPANY to a private easement had been adjudicated adverse to the respondent and pointed out to the Supreme Court of Florida that it, by its judgment and mandate, had denied to the petitioner the equal protection of the laws and due process of law as guaranteed to the petitioner by the Fourteenth Amendment to the Constitution of the United States. This petition was denied.

II.

Statement Particularly Disclosing the Basis Upon Which It Is Contended that this Court Has Jurisdiction to Review the Judgment in Question.

The Supreme Court of the United States has jurisdiction to review the judgment of the Supreme Court of Florida in question under *Section 1257 of the Judicial Code (Title 28, Section 1257, U. S. Code)*, in that:

(a) It is a final judgment of the highest court of the state in which a decision could be had.

(b) Petitioner set up at the earliest possible moment and by appropriate pleading (petition for rehearing) a right, privilege or immunity guaranteed to the petitioner under the Fourteenth Amendment of the Constitution of the United States.

(c) The judgment and mandate of the Supreme Court of Florida denied to the petitioner due process of law and the equal protection of the laws in that a state agency of the State of Florida (the Supreme Court of Florida) rendered a judgment against the petitioner denying him his property rights without the jurisdictional power so to do as fixed and established by the laws of the State of Florida, and in that said judgment of the said court constituted a fiat which denied the petitioner the right of a trial of his cause as guaranteed to him under the laws and the Constitution of the State of Florida.

III.

Questions Presented.

First Question.

Where it appears that:

(a) A trial court of general jurisdiction in the State of Florida renders a final decree in which it is held and adjudicated that the respondent has no claim, interest, or title in and to the petitioner's property; and

(b) This decree is affirmed by the Supreme Court of Florida, the highest appellate court of the State of Florida, and the term of court at which the said affirming judgment and mandate was rendered has expired; and

(c) Under the laws of the State of Florida the judicial power of the Supreme Court of Florida has been expended and is terminated after the expiration of the said term of court at which the said judgment was rendered; and

(d) The Supreme Court of Florida possesses no jurisdictional power to modify, change, or reverse said judgment; and

(e) Notwithstanding the laws of Florida, the Supreme Court of Florida does change, modify and reverse its said judgment and mandate without jurisdictional power so to do,

under such circumstances, has the Supreme Court of Florida in so revoking its former judgment without jurisdictional power so to do, denied to the petitioner the equal protection of the laws and due process of the law as guaranteed to the petitioner by the Fourteenth Amendment of the Constitution of the United States.

Second Question.

Where it is made to appear in a legal contest between the petitioner and the respondent that:

(a) The respondent claims property rights in and to property, the legal title to which is vested in the petitioner; and

(b) The trial court of appropriate jurisdiction determines and decrees by final adjudication that the respondent has no right or claim in and to the petitioner's property; and

(c) The trial court reserves jurisdiction of the cause solely for the purpose of determining whether or not the public has an interest in and to or over the petitioner's property; and

(d) Where the trial court fixes the sole issue to be tried under such a reservation of jurisdiction in the following language whether or not "there is any reasonable basis or opportunity for the petitioner's property to be used for public highway, public street or public sidewalk" and this decree is affirmed by the Supreme Court of Florida; and

(e) Thereafter by supplemental order, the trial court determines the issue fixed and affirmed by the Supreme Court of Florida in the petitioner's favor holding that there is no reasonable basis or opportunity for the petitioner's property to be used for public purposes; and

(f) The respondent appeals from this supplemental order; and

(g) Upon this appeal the Supreme Court of Florida changes its former ruling and determines that the issue that should have been tried was whether or not the petitioner's property "may never be used as a public highway, public street or public sidewalk" and orders a final dismissal of the petitioner's bill of complaint without affording the petitioner an opportunity to try the changed or substituted issue,

does the judgment and mandate of the Supreme Court of Florida upon the subsequent appeal deny to the petitioner the equal protection of the laws and due process of law as guaranteed by the Fourteenth Amendment of the Federal Constitution.

Third Question.

In a legal contest between the petitioner and the respondent where it appears:

(a) That it is a settled, established and unvarying law of the State of Florida (save in the case of

fraud upon the court or corruption upon the court) that the Supreme Court of Florida loses jurisdictional power to modify, change or reverse its judgment and mandate in a given cause after the term has expired at which said judgment and mandate is rendered; and

(b) In such a contest a final decree of the trial court is rendered in favor of the petitioner and thereafter an appeal is prosecuted to the Supreme Court of Florida by the Respondent and the Supreme Court of Florida renders its judgment and mandate in favor of the petitioner affirming the trial court's decree; and

(c) Thereafter, the term of court expires at which the said judgment and mandate of the Supreme Court is rendered; and

(d) Thereafter, the Supreme Court of Florida ignores the established rule of law which denies it the jurisdictional power over said judgment and decree (a rule of law applicable to all other litigants) and without such jurisdictional power it modifies, changes and reverses its own judgment and mandate which had been rendered in favor of the petitioner,

does this fiat of the Supreme Court of Florida deny to the petitioner the equal protection of the laws and due process of law guaranteed to the petitioner under the Fourteenth Amendment of the Federal Constitution.

IV.

Reasons Relied on for the Allowance of the Writ.

This case presents questions of great public interest to the people of Florida. These questions have not been hitherto directly decided by the Supreme Court of the United States:

1. The Supreme Court of Florida as presently constituted (three new justices) as a State agency, has rendered

a judgment against the petitioner denying him his property rights without the judicial power to render judgment.

2. The Supreme Court of Florida as a State agency totally impotent of judicial power to do so has denied to the petitioner the right to a trial in defense of his property rights under circumstances in which all other litigants in Florida are accorded a trial.

3. These actions of the Supreme Court of Florida as a State agency constitute a denial to the petitioner of the equal protection of the laws and due process of law as guaranteed to the petitioner by the Fourteenth Amendment of the Constitution of the United States.

It is recognized that the Constitution of the United States does not guarantee citizens against erroneous decisions of state courts. Such is not the basis of this petition.

It is also recognized that the Constitution of the United States does not guaranty citizens against a scuttling of the doctrine of *stare decisis* by state courts even though such conduct may convert that doctrine into a quick sand which entraps litigants because of their reliance in their every day transactions upon rock ribbed principles firmly fixed by an unbroken line of prior judicial decisions. Such is not the basis of this petition.

If a court acts when it possesses no power to act under the law—if a court deprives a citizen of his property after its power to do under the law is long since exhausted —if a court deprives a citizen of a trial without judicial power to deny a trial—it does not function as a court. It is nothing more than an aggregation of individuals utilizing the symbolized authority of its robes to accomplish an illegal act. Such is the basis of this petition.

Surely under such circumstances, it is a matter of great public interest that a state court by the judicial judgment of the highest Court of the land be stabilized at least to the point where it must recognize the well defined limits of its own judicial power.

The premises considered, your petitioner prays that a writ of certiorari may be issued to the Supreme Court of Florida, requiring it to transmit to this Court under its official seal a true and correct copy of the record of its judgment herein for such further relief as, upon consideration thereof, this Court shall find the petitioner is entitled to receive.

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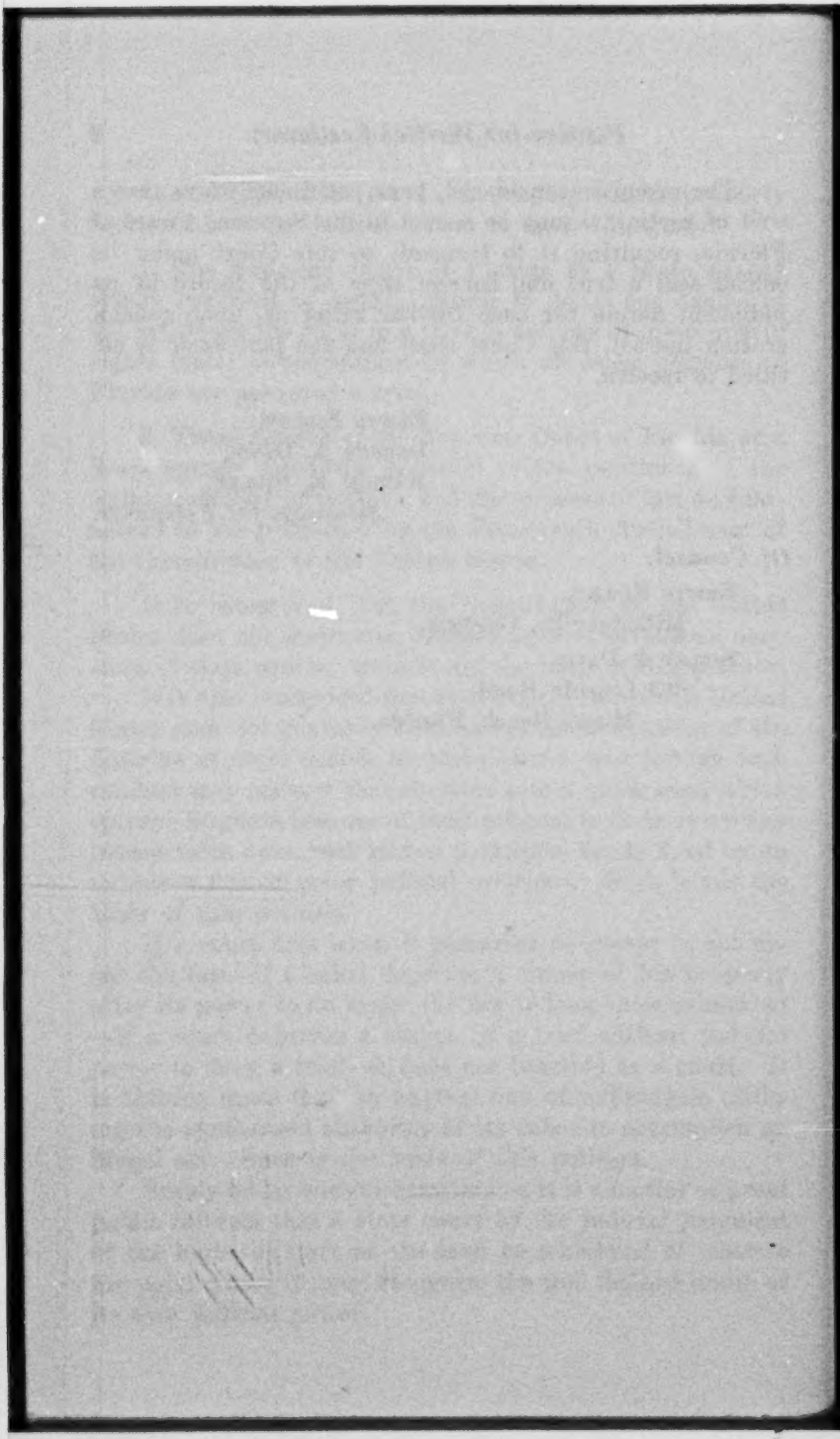

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

Statement of Facts.

On June 2, 1950, petitioner filed his bill of complaint (R. 1-26) in the Eleventh Judicial Circuit in and for Dade County, Florida, wherein he set forth that the petitioner and respondent, Sinclair Refining Company, each deraigned their title to the same parcel of land from a common grantor. The common grantor was Harry H. Packer.

On July 1, 1936, petitioner's remote predecessor in title received a warranty deed from Packer to the parcel of land. The property is located in Dade County, Florida. By successive warranty deeds, the property was conveyed to the petitioner. The warranty deed from Packer to the petitioner's predecessor in title contained the following covenant in the body of the deed:

> "It is distinctly understood and agreed that the property herewith and hereby conveyed shall never be sold to any person or corporation to be used for private purposes, but that the same shall be used only for street, roadway, highway, or sidewalk purposes."

The respondent, Sinclair Refining Company, on the *24th day of January, 1941,* received a quit claim deed from Packer, conveying the identical property. This deed conveyed to Sinclair Refining Company "all of the grantor's right, title, interest and claim in and to" the property involved. Sinclair's quit claim deed was made expressly subject to and subordinate to the prior deed given by Packer to the petitioner's predecessor in title, dated *July 1, 1936.* Petitioner's chain of title (chain of warranty deeds) had been duly recorded in the public records of Dade County, Florida, commencing with the deed of July 1, 1936.

NOTE: All notations of the Transcript and page number refer to the original record, not to the printed record.

Sinclair Refining Company's quit claim deed contained exactly the same covenant above-quoted, which appeared in petitioner's chain of title. Moreover, Sinclair Refining Company's quit claim deed contained an additional covenant as follows, to-wit:

> ". . . and the grantee herein in accepting deed hereby agree that the tract of land last above described which was conveyed to Sunny Isles Ocean Beach Company, a Florida corporation, for street, roadway, highway, or sidewalk purposes shall be forever set aside and dedicated for street, roadway, highway or sidewalk purposes *and shall never be used for private purposes of any kind with grantee's consent.*" [Emphasis supplied.]

From the complaint it further appears that Sinclair Refining Company owned the property adjoining the petitioner's property and that it was attempting to use the petitioner's property for private commercial purposes, that is, as a roadway or driveway into and out of its filling station located on the adjoining lot. The complaint sought an injunction against Sinclair Refining Company from making private use of the petitioner's property, and also an adjudication that the covenant was void because it attempted to unreasonably restrict the use of the petitioner's propery perpetually. It sought a decree quieting petitioner's title to the said property.

On July 10, 1950, respondent filed its answer (R. 26-41). In it, it sought to set forth three defenses, as follows:

> (1) Sinclair Refining Company had acquired title to petitioner's property by adverse possession under color of title.
>
> (2) Sinclair Refining Company had a private or personal right over the petitioner's property.
>
> (3) The general public had a right to petitioner's property as a public highway, street, or sidewalk.

Under the statutes and rules governing equity causes such as that filed by the petitioner, the parties are required to submit their testimony within two months after the cause comes to issue. See *Rule 46, Florida Equity Rules.*

On December 12, 1950, after the time for taking testimony had expired, respondent made a motion for a decree on the pleadings (R. 41). No testimony had been submitted and neither of the parties had the right to submit testimony.

On April 9, 1951, the trial court rendered its decree in which it ordered, adjudged and decreed as follows, to-wit:

> "That the defendant Sinclair's contention of adverse possession is groundless under the circumstances and it has not acquired any interest in the property in question by adverse possession or otherwise." (R. 43)

The court further decreed that Sinclair's use of the property for private purposes and personal gain as an adjunct to its filling station business, was contrary to the restriction contained in the deed it accepted and the court in effect held that the Sinclair Refining Company was estopped to claim any interest in the said property.

The lower court further decreed as follows, to-wit:

> "It appears to this Court that it will be necessary to take testimony to determine whether or not there is any logical or reasonable basis or opportunity for the use of the corner lot in question as a public highway, or public street or public sidewalk, . . ."

The court expressly stated that its decree was a final decree and that it retained jurisdiction only and solely for the purpose of determining the issue stated (R. 44).

On the 4th day of May, 1951, respondent prosecuted its appeal to the Supreme Court of Florida (R. 58) and assigned the rendition of this final decree as error (R. 59). Thereafter, on the 11th day of December 1951, the final

decree of the lower court was affirmed by the opinion and decision of the Supreme Court of Florida (R. 63). See, *Sinclair Refining Company v. Watson*, 55 So. 2d 803. Thereafter, the respondent filed a petition for rehearing (R. 64). This petition was denied (R. 67). The Mandate of the Supreme Court of Florida came down (R. 67).

The Master appointed by the court to determine the issue outlined in the court's final decree, found in the petitioner's favor (R. 69). On March 20, 1952, the lower court rendered an order supplemental to final decree (R. 165) in which it determined that there was no reasonable basis or opportunity for the property in question to be used as a public highway, public street or public sidewalk, and thereupon cancelled the covenant as void (R. 166).

On April 2, 1952, Sinclair Refining Company appealed this supplemental decree to the Supreme Court of Florida (R. 182). On April 10, 1952, it filed assignments of error and directions to the clerk (R. 186-191).

The petitioner filed his motion to dismiss the second appeal upon the ground that it presented no substantial question to be determined by the Supreme Court of Florida and that the opinion and decision of the Supreme Court of Florida upon the former appeal in which it affirmed the final decree, had settled all questions sought to be raised by the respondent on its second appeal.

On June 2nd, 1952, the Supreme Court of Florida denied the petitioner's motion to dismiss the appeal, but further ordered as follows, to-wit:

> "It is further ordered by the Court of its own motion that the assignments of error numbered 2, 3, 4, 5, 6, 7, 8, 12, 14, 15, 17 and 18, be and they are hereby stricken because the matters and things sought to be raised by said assignments of error have been determined on a former appeal to this Court; it is further ordered that the cause shall proceed to final determination in this Court on assignments of error numbered 1, 9, 10, 11, 13 and 16."

The assignments of error not stricken numbered 1, 9, 10, 11 and 16, were directed to the quesion of whether the public had any right or interest in the petitioner's property. Assignment of error numbered 13 complained of a ruling of the Master upon evidence taken before him (R. 186-191).

On the 17th day of April, 1953, the Supreme Court of Florida rendered its opinion and decision upon the second appeal (R. 200-202), *Sinclair Refining Co. v. Watson,* 65 So. (2d) 732, and held:

> (1) Sinclair Refining Company had an interest in the petitioner's property in the form of a private easement across the petitioner's property.
>
> (2) The public had a valid claim to petitioner's property because it had not been made to appear that the petitioner's property "will never be needed in the future as a part of" a public highway, public street, or public roadway.

On the 22nd day of May, 1953, the petitioner filed his petition for rehearing (R. 202-209) in which he pointed out that:

> (a) The Supreme Court of Florida by its opinion and decision of April 17, 1953, denied the petitioner equal protection of the law and due process of the law guaranteed the petitioner by the Fourteenth Amendment to the Constitution of the United States, because the Court had no judicial power or authority to modify, change, or vacate its prior judgment of affirmance, in which it held that the respondent had *no interest* in petitioner's property.
>
> (b) The Supreme Court of Florida on the first appeal affirmed in toto the decree of the lower court which fixed the sole remaining issue to be tried as "whether or not there is any logical or reasonable basis or oppor-

tunity for the use of the corner lot in question as a public highway, or public street or public sidewalk," and on the second appeal, the Supreme Court of Florida without power so to do, held that the public had a valid claim and that the issue was whether the petitioner's property will never be needed for use as a public roadway, public street or public sidewalk, and thus failed to afford the petitioner a trial upon the improperly substituted issue. It thereby denied petitioner equal protection of the law and due process of law guaranteed by the Fourteenth Amendment of the Constitution of the United States.

(c) The order of the Supreme Court of Florida striking the respondent's assignments of error, had led the petitioner to believe that these assignments had forever and finally been adjudicated, and thereby prevented the petitioner from briefing or arguing said assignments of error, which deprived the petitioner the right to be heard in the Supreme Court of Florida, and this constituted a denial of due process of the law.

On the 1st day of June, 1953, this petition for rehearing was denied by the Supreme Court of Florida (R. 210). From this order and final determination, this certiorari is prosecuted.

Questions Numbered 1 and 3.

The first and third questions, found on pages 4 and 6 of the Petition for Writ of Certiorari, will be presented together in this Brief.

The petitioner filed his cause in the Eleventh Judicial Circuit in and for Dade County, Florida. This is a court of general chancery jurisdiction. See, *Section 11, Article V, of the Constitution of the State of Florida.* The trial court rendered a final decree in which it held and adjudicated that the respondent's

"... contention of adverse possession is groundless under the circumstances and it has not acquired *any interest* in the property in question by adverse possession or *otherwise.*" [Emphasis supplied.]

The respondent filed a petition for rehearing in the trial court (R. 45). This petition was denied. Thereupon, the trial court lost jurisdiction to modify, or change its decree. The decree became absolute. *Mabson v. Christ,* 96 Fla. 756, 119 So. 131; *Eberle v. Wilson,* 97 Fla. 384, 120 So. 851. It had the power to retain jurisdiction of some special issue, and its reservation of jurisdiction only operated to maintain its power over the special issue so reserved.

An appeal was taken from this decree in April, 1951. An appeal is the appropriate process to review a final decree in Florida. Certiorari in the Supreme Court of Florida is employed to review interlocutory orders. See, *§ 59.02, (3), Florida Statutes Annotated.*

In December, 1951, the Supreme Court of Florida affirmed this final decree (R. 63) in the following language, to-wit:

"This appeal is before this Court on a decree of the Chancellor below in favor of the plaintiff below, the appellee here, against the appellant here, who was one of the defendants below, wherein the cause had been set down before the Chancellor on Bill and Answer, the time for taking testimony having expired without any testimony having been offered by either party. A careful reading of the Bill and Answer and the authorities cited by both parties reveals that the Chancellor could have arrived at no other decision than the one that he did.

Accordingly, the decree of the lower court is affirmed." *Sinclair Refining Company v. Watson, supra.*

A petition for rehearing was filed and denied (R. 63, 67).

The Supreme Court of Florida has two terms of court, one commencing the 2nd Tuesday in January and expiring at the commencement of the next term on the 2nd Tuesday in June. § *25.05, Florida Statutes Annotated.* Thus, the decision was rendered during the June Term, 1951, which term of court expired on the 2nd Monday in January, 1952.

Petition for rehearing was denied on the 15th day of January, 1952, and the term in which this order was rendered expired on the 2nd Tuesday in June, 1952. The Mandate and judgment of affirmance became absolute upon the expiration of the term at which the judgment of affirmance was rendered, and the Supreme Court of Florida lost all judicial power to modify, reconsider or change its decision or judgment thereafter.

The jurisdiction of the Supreme Court of Florida, "like the jurisdiction of courts generally, persists to the end of the term, *and then terminates,* but that, during the term at which a judgment of this court is rendered, this court has jurisdiction and power which it may exercise as the circumstances and justice of the case may require, to reconsider, revise, reform, or modify its own judgments for the purpose of making the same accord with law and justice, . . . ". [Emphasis supplied] *Chapman v. St. Stephens Protestant Episcopal Church, Inc., et al.,* 105 Fla. 683, 138 So. 630, 632.

Questions decided by the former appeal "are no longer open for discussion or consideration". *Purvis v. Frinck,* 61 Fla. 712, 54 So. 862.

The former opinion "has conclusively settled the law of this case. . . . Therefore, this court (the Supreme Court of Florida)" on the second appeal "*is without authority* to review or reverse what it has heretofore decided as the law of the case, even if it were so inclined". *Family Loan Company v. Smetal Corporation,* 123 Fla. 900, 169 So. 48.

The rule announced by the Supreme Court of the United States in *Mutual Life Insurance Co. v. Hill,* 193 U. S. 551,

24 S. Ct. 538, in which it is held that ". . . an affirmance of a judgment is to be considered an adjudication by the appellate court that none of the claims of error are well-founded,—even though all are not specifically referred to in the opinion,—yet no such conclusion follows in case of a reversal, . . .", has been adopted in Florida. See, *Florida East Coast Railway Co. v. Geiger,* 66 Fla. 582, 64 So. 238.

So it is that the affirmance of a decree of the lower court closes the record upon all problems dealt with in the final decree from which an appeal is taken, whereas, a reversal of the decree normally leaves the record open. Applying these rules to the case at bar, it is obvious that the affirmance by the Supreme Court of Florida of the lower court's decree, in which it was held that the respondent had no interest in the petitioner's property, closed the book after the term of the Supreme Court of Florida expired, at which the affirming opinion, decision and mandate was rendered. The Supreme Court of Florida was without judicial power to modify, change, re-consider or reverse its adjudication. To do so, *and it did so,* denies to the petitioner the benefit of the doctrine of res judicata, denies to the petitioner the recognized doctrine of the law of the case, and the action of the Supreme Court of Florida by reconsideration and reversal of its former opinion, *was taken at a time when it did not possess the power to do so.*

The prohibition of the Fourteenth Amendment to the Constitution of the United States applies to this act of the judiciary of the State of Florida. *Virginia v. Rives,* 100 U. S. 313, 25 L. Ed. 667. In *Ex Parte Virginia,* 100 U. S. 339, 25 L. Ed. 676, it is said:

> "Whoever, by virtue of public position under a state government, deprives another of property, life or liberty without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and

for the State, and is clothed with the State's power, his act is that of the State."

In the case of *Brinkerhoff-Faris Trust and Savings Co. v. Hill,* 281 U. S. 673, 50 S. Ct. 451, it is said:

"The federal guaranty of due process extends to state action through its judicial as well as through its legislative, executive or administrative branch of government."

And, in the recent case of *Shelley v. Kraemer,* 334 U. S. 1, 68 S. Ct. 836, it is stated:

"That the action of state courts and of judicial officers in their official capacities is to be regarded as action of the state within the meaning of the Fourteenth Amendment, is a proposition which has been long established by decisions of this Court."

We recognize that there is no constitutional right to have all general propositions of law once adopted, remain unchanged. *Patterson v. Colorado,* 205 U. S. 454, 27 S. Ct. 556. But, in the *Patterson* case and in cases of similar import, the Supreme Court of the United States was dealing with the question of whether the act of a State court in overruling a former decision (not in the same case), was a denial of due process of law or the equal protection of the law.

We recognize that there is no vested right under the doctrine of stare decisis; however, the situation at bar involves an entirely different question. Here the rights of the litigants were fixed by the first judgment of the Supreme Court of Florida. That judgment had become binding and conclusive. The Supreme Court of Florida no longer had or could exercise judicial power over it. Its act in reversing this former judgment was not the act of a court clothed with jurisdiction.

Although its second judgment was erroneous, this is not the complaint urged. The petitioner relies upon the proposition that the second judgment was a nullity, a nullity so construed by the Supreme Court of Florida in its own decisions, a nullity which deprives the petitioner of the full use of his property. Thus, a State agency—the Supreme Court of Florida—acting through its judicial officers in their official capacity, have destroyed the petitioner's property rights without judicial power so to do.

The first fundamental requirement of due process is that the court which deprives a person of his property shall have jurisdictional power to render the judgment. See, *Scott v. McNeal,* 154 U. S. 34, 14 S. Ct. 1108; *Twining v. New Jersey,* 211 U. S. 78, 29 S. Ct. 14; *Old Wayne Mutual Life Association, v. McDonough,* 204 U. S. 8, 27 S. Ct. 236; *McDaniel v. McElvy,* 91 Fla. 770, 108 So. 820.

The Supreme Court of Florida judged by its own decisions, judged by general law, and judged by the law of the land, did not have the judicial power to grant to the respondent an interest in and over the petitioner's land, at the time it rendered the judgment conferring these rights upon the respondent. Thus, the first requirement of due process is absent, namely, the power of the court to act.

This presents a situation where the Supreme Court of Florida, in overruling an earlier final decision in the same case, thereby made invalid what it had theretofore *irretrievably* determined to be valid. It did not possess the judicial power to make its second decision. Yet, notwithstanding its lack of power, it has given a decision which destroys the petitioner's property rights.

The petitioner could not anticipate the constitutional question until after the decision of the Supreme Court of Florida had been rendered. In truth, the court's order on the second appeal striking respondent's assignments of error, clearly indicates that the Supreme Court of Florida recognized that it was bound by its former decision and possessed no power to change it. The only opportunity

afforded the petitioner to raise the constitutional question was by petition for rehearing directed to the decision of the Supreme Court of Florida as this decision supplied the unexpected basis for a claim by the petitioner of the denial of a federal right. Raising the question in this fashion under these circumstances, is timely. *Great Northern Railway Co. v. Sunburst Oil & Refining Co.*, 287 U. S. 358, 53 S. Ct. 145; *Brinkerhoff-Faris Trust and Savings Co. v. Hill, supra.*

Question Numbered 2.

The second question presented is found on page 5 of the Petition for Writ of Certiorari.

On the first appeal, the Supreme Court of Florida affirmed the lower court's decision, that the respondent had no interest in the petitioner's land. It also affirmed the lower court's conclusion that the only issue to be tried was "whether or not there was any logical or reasonable basis or opportunity for the use of the corner lot in question as a public highway, public street or public sidewalk". This issue was tried in the lower court and the petitioner carried the burden and procured a decision of the court in his favor.

The entire final decree of the lower court was assigned as error upon the first appeal. This included the determination and fixing of the issue which remained to be tried. The affirmance of the Supreme Court of Florida bound both the Supreme Court of Florida and the lower court, as well as the parties to the trial of only that issue, and no other. See, *Butler v. Major Holding Co.*, 145 Fla. 549, 200 So. 96.

On the second appeal, the Supreme Court of Florida determined that the issue that should have been tried by the lower court was whether the petitioner's property would "never be needed as a public highway, public street or public sidewalk". It thereupon directed that the petition-

er's suit be dismissed with prejudice. The petitioner was never given an opportunity to present evidence or to try the substituted issue. Even though we overlook the inherent unfairness in changing the rules after the game has been played in order to deprive the petitioner the fruits of victory, yet it is obvious that a refusal to permit a trial on the substituted issue was a denial of due process of law and of the equal protection of the law.

A situation almost identical with the one presented here is disclosed in the case of *Saunders v. Shaw,* 244 U. S. 317, 37 S. Ct. 638. In that case, the Supreme Court of the United States held that a change of the issue after the case has been tried, thus depriving the victor of the fruits of his victory, through the change in the rule, and without affording him an opportunity to retry the case upon the substituted issue is a denial of due process of law and equal protection of the law. See also, *Brinkerhoff-Faris Trust and Savings Co. v. Hill, supra.*

Due process of law is nothing less than fair play—an opportunity to contest under established principles. When a court directs a contest to be tried and fixes the rules and principles that are to govern the trial, there is a total absence of fair play if the established rules and principles are changed by the court after the contest has been concluded in such fashion that the victor is deprived of his victory. This is doubly so when he is denied an opportunity to try the contest under the substituted or subsequent rules. That is what happened to the petitioner in the case at bar.

Conclusion.

Whether the first decision of the Supreme Court of Florida was just and fair may be considered immaterial to this inquiry. Notwithstanding, we urge that there seems little room to contend that an unjust result was obtained by the first decision of the Supreme Court of Florida.

On the point dealing with the respondent's claim to an interest in the petitioner's property in the form of a private

easement across this property, we think it is clear that the respondent's claim was spurious. The respondent's claim is predicated upon a deed which it accepted as grantee, and which contained a covenant on the part of the respondent as such grantee that:

> ". . . the grantee herein in accepting deed hereby agree that the tract of land last above described which was conveyed to Sunny Isles Ocean Beach Company, a Florida corporation, for street, roadway, highway, or sidewalk purposes shall be forever set aside and dedicated for street, roadway, highway or sidewalk purposes and shall never be used for private purposes of any kind with grantee's consent."

Under the law of Florida, this covenant bound the respondent. It was estopped to claim a right or easement affording to it a private or business use of the property. This was the basis upon which the lower court predicated its final decree in which it held that the respondent had no interest in the petitioner's property. This, in truth, was the actual basis upon which the Supreme Court of Florida affirmed this final decree.

Moreover, upon the second appeal, the Supreme Court of Florida struck all the respondent's assignments of error dealing with this problem on the ground that this question had been adjudicated beyond redemption by its former decision. Consequently, the petitioner relying upon this order, did not brief or argue this point. Suddenly, and without warning, and without vacating its order striking respondent's assignments of error, and without affording the petitioner a chance to defend himself, the Supreme Court of Florida decided to "eat crow" (R. 196-202). It decided to reverse its former judgment. It decided to give to the respondent an interest in the petitioner's land. The petitioner pointed out in his petition for rehearing of this decision in the Supreme Court of Florida, that such con-

duct denied the petitioner "fair and full debate and full opportunity . . . to defend himself against the position assumed by the Court" (R. 202-210).

The opinion on the second appeal fails to deal with the respondent's covenant in the deed under which it claimed. Its failure to do so was brought pointedly to that court's attention in the petitioner's petition for rehearing. The Supreme Court of Florida persisted to ignore the unanswerable proposition presented by the respondent's own covenant.

On the other point decided by the second decision of the Supreme Court of Florida, it seems unjust that the petitioner should be required to pay taxes on his property forever,—(assessed as private property)—at the same time denying it the use forever for *any purpose* on the theory that it may be required for public use at some vague and unperceivable time, not in the foreseeable future.

In 1948-1949, the State of Florida built two broad four-lane highways along the east and south boundaries of this corner lot. It also constructed *permanent* curbs and sidewalks on these exposed sides of the land. Petitioner has reason to believe that the public officials of Florida charged with the duty of constructing highways, if afforded an opportunity, would unhesitatingly testify that they have no use for the remaining portions of this land, and that they have already utilized all of this property needed now or at any time in the foreseeable future for highway, roadway or sidewalk purposes, and that they would testify that no further improvements are contemplated of this character and that no projected plans for such improvements have been conceived. The petitioner was not afforded an opportunity to present this proof. It was irrelevant to the issue actually tried as that issue was fixed by the final decree and judgment of affirmance of the Supreme Court of Florida.

The petitioner's property, like the respondent's adjoining property, and all other property along these highways,

will never be needed for roadway, highway or sidewalk purposes within our life span. This is so because of the *permanent* public highways so recently constructed.

In this case, the petitioner has not been accorded fair play. He has been denied due process; he has been denied equal protection of the laws. His property rights have been taken from him by an aggregation of persons who possess the indicia of a court, but who did not possess judicial power of a court. Their judgment rendered without the power to render, is a nullity. Gauged by their own announced standards, the judgment of the Supreme Court of Florida on the second appeal is a nullity. Their determination to ignore these announced standards, and thus, through this nullity, deprive the petitioner of his property, we respectfully urge, confers upon the petitioner the right to successfully petition the Supreme Court of the United States, by virtue of the guarantees contained in the Fourteenth Amendment to the Federal Constitution, to strike down this nullity and thus, restore to the petitioner his property unlawfully taken.

Respectfully submitted,

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HAROLD B. WILLEY,

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1952.

No. 297.

FRANK B. WATSON, JR.,
Petitioner,

v.

SINCLAIR REFINING COMPANY, a corporation,
Respondent.

REPLY BRIEF

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SINCLAIR REFINING COMPANY, a corporation,

Respondent.

REPLY BRIEF

The Petition for Certiorari claims that the Supreme Court of Florida, by its opinion, violated the doctrine "the law of the case" and thereby denied to Petitioner his property without due process of law.

STATEMENT OF FACTS

A Bill of Complaint was filed in the Circuit Court of Dade County, Florida by the Petitioner therein and hereinafter designated as Petitioner, against the Sinclair Refining Company, hereinafter referred to as Respondent, and others, wherein it was alleged that Petitioner and

Respondent deraigned their title to certain properties from the same source. That Henry H. Packer, the source from which title is deraigned, in 1936 conveyed the property to Sunny Isles Ocean Beach Company (Record 11), and Sunny Isles Ocean Beach Company conveyed to S. P. Lamon, et ux on March 27th 1940 (Record 14) and Lamon conveyed to Petitioner on May 10th 1950 (Record 16). Suit was instituted on June 2nd 1950. On January 24th 1941 Packer conveyed to Sinclair Refining Company (Record 19). Each of these conveyances carried a covenant, described in the Bill of Complaint (Record 2):

> "It is distinctly understood and agreed that the property herewith and hereby conveyed shall never be sold to any person or corporation to be used for private purposes, but that the same shall be used only for street, roadway or sidewalk purposes."

except the deed from Lamon to Petitioner which was a Warranty Deed. The Bill prayed for a declaratory decree (a) that the court determine, declare and decree whether or not the clauses or provisions mentioned in said deeds are void, ineffectual or unenforceable (Record 10) and other relief. Issue was made by the Answer, and upon hearing of Bill and Answer the Court entered its Judgment (Record 38-39) a part of said Decree being as follows:

> "5. One prayer is for a determination as to whether the restriction or servitude in the deed is valid, or shall be declared by the Court to be invalid and of no effect. It appears to this Court that it will be necessary to take testimony to de-

termine whether or not there is any logical or reasonable basis or opportunity for the use of the corner lot in question as a public highway, or public street or public sidewalk, because otherwise, in view of the disclosure in the answer that the original grantors' purpose was not to make a public street, but was to create a situation where the adjoining filling station would have the equivalent of an easement, the validity thereof is questionable.

"Whereupon, it is further ordered that this cause be and it hereby is referred to George Simpson, an Attorney at Law, as Special Master to take testimony relevant to the matter or issue stated in the preceding paragraph of this Decree, and jurisdiction is reserved to determine and decree the status and validity or invalidity of the condition or equitable servitude of said deed after the coming in of such Master's Report, together with the testimony and his findings." (Record 39).

An appeal was taken to the Supreme Court of Florida and by a divided opinion dated December 11th 1951 the Judgment of the Circuit Court was affirmed (Record 52-53) Sinclair Refining Company v. Watson 55 So. 2d 803. On January 15th 1952 the Mandate issued from the Supreme Court to the Lower Court with directions that such further proceedings be had in the cause as, according to right, justice and the judgment of the Supreme Court, and the laws of Florida, ought to be had. (Record 57). Upon the coming down of this Mandate testimony was taken by a Special Master in conformity with the

directions contained in the first Order of the Circuit Court (Record 59-131) and such Special Master, from the testimoney, found: (Record 58)

> "The testimony as submitted before me shows that the corner lot in question was used by the public mainly for ingress and egress to and from the filling station owned by the defendant Sinclair Refining Company; that use of the property in question was by motorists cutting across the lot to avoid delay at the traffic light, and there is some evidence to the effect that the property in question was used by garbage trucks for the purpose of collecting garbage and in some instances individuals used the lot for private parking, etc."

The Master found from the testimony submitted before him that there is no logical or reasonable basis or opportunity for the use of the property in question as a public highway or public street, or public sidewalk (Record 58-59).

Thereafter, on March 20th 1952, there was filed in said Circuit Court a Supplemental Final Decree (Record 137) affirming the Master's Report and decreeing in part:

> "The purported restriction on the use of plaintiff's property appearing in deeds in plaintiff's chain of title (reciting the restrictions contained in the deeds) is void and of no force and effect and is hereby voided and cancelled."

An appeal was taken from this Final Decree, and in this second appeal the Supreme Court of Florida filed its

opinion dated April 17th, 1953 (Record 160-164) with concurring opinion (Record 164-166) Sinclair Refining Co. v. Watson, 65 So. 2d 732; and in which said Opinion the Court said in part:

> "The only question here, then, is whether there has been such a change of circumstances as should make it inequitable to enforce the restrictive covenant. And we think the circumstances here present, negative the conclusion reached by the Special Master and the Chancellor."

It therefore appears that the decision of the State Court was bottomed upon the testimony produced in conformity with the directions contained in the first Decree (Record 38) entered in the Lower Court.

WHERE A STATE COURT DETERMINES AND DECLARES "THE LAW OF THE CASE" AS APPLIED TO PREVIOUS ORDERS ON LATER ACTION OF THE COURT RENDERING THEM IN THE SAME CASE, SHOULD CERTIORARI ISSUE TO REVIEW THE LATER DECISION?

This question is divided into two heads:

(1) UNDER THE ABOVE CIRCUMSTANCES WHAT IS "THE LAW OF THE CASE" AS DETERMINED BY THE SUPREME COURT OF FLORIDA?

(2) UNDER THE ABOVE CIRCUMSTANCES IS "THE LAW OF THE CASE", AS

DETERMINED BY THE STATE COURT A FEDERAL QUESTION?

(1)

The sole ground of the Petition for Certiorari is that the Supreme Court of Florida was without jurisdiction to enter the Final Decree above referred to, and the basis thereof is that the Supreme Court in deciding the matter departed from "the law of the case" as the law of the case had been promulgated by the Supreme Court of Florida.

The Supreme Court of Florida has determined for itself the construction, application and effect of the term "the law of the case"; and in Boose v. Henderson 3 So. 2d 757, 158 Fla. 101 and Joiner v. Branard 36 So. 2d 364, 160 Fla. 681 it laid down the rule that "the law of the case" is not applicable to and not decisive of points presented on second appeal that were not presented upon former appeals. The original suit between the parties was instituted on June 2nd 1950, prior to which time, on November 29th 1946 and February 28th 1947 the Supreme Court of Florida decided in Ball v. Yates 29 So. 2d 729, 158 Fla. 521, Certiorari denied 92 Law Ed. 359 Case No. 156 James Yates, Petitioner v. Edward Ball:

> "The law of the case is fixed by issues actually adjudicated on appeal, and does not extend to such issues as might have properly been adjudicated. If there be any conflict between the law of the case as established by the first appeal with the law of the case as established by the second appeal, then in that event the latter will control over the first."

And, upon the petition for rehearing in said cause the Court said:

> "The law of the case has to do with questions of law decided on appeal as applied to subsequent proceedings of the case. The decisions agreed that as a general rule when an appellate court passes upon a question and remands the cause for further proceedings the question there settled becomes the law of the case upon a subsequent appeal, provided the same facts and issues which were determined in the previous appeal are involvd in the second appeal. But, if the **facts** are different so that the principals of law announced on the first appeal are not applicable as where there are material changes in the evidence, pleading or findings, a prior decision is not conclusive upon the question presented upon the subsequent appeal and the original proceedings are before the court on second appeal **so far as it is necessary to determine** any new points in the controversy between the parties which were not determined by the original decree."
> (Emphasis added.)

It therefore appears that the settled law of Florida is as above quoted and there has been no such departure from its former opinion or from the first final decree as would constitute an invasion of the law of the case as defined by the Florida courts. This is demonstrated by the denial of Petitioner's petition for rehearing. (Record 166). The decisions show that at the time of the institution of these proceedings "the law of the case" as applied to Florida decisions on second appeals is:

> "If there be any conflict between the law of the case as established by the first appeal with the law of the case as established by the second appeal, then in that event the latter will control over the first." Ball v. Yates, supra.

It appears from the first decree that the Lower Court specificially reserved jurisdiction to determine and decree the status and validity or invalidity of the condition or equitable servitude of said deed until after the coming in of the Master's Report, together with the testimony and findings (Record 39). The Supreme Court approved this reservation and ratified the retention of jurisdiction and directed, by its Mandate (Record 57), that further proceedings be had in said cause. The testimony in the cause was taken and the plaintiff was not deprived of presenting any testimony which went to the issue of the status, the validity or invalidity or the condition or the equitable servitude of said deed. The Master found, and the Court approved such finding and decreed that upon the testimony the restrictive covenant contained in said deed was invalid (Record 138 Para. 2) and that such restriction was voided and cancelled.

An appeal from this Order resulted in a reversal of the Lower Court, and this reversal Petitioner claims deprived him of a Constitutional right. The Decree of the Supreme Court, among other things, stated:

> "It should also be noted that no attack was made on the validity, ab initio, of the restrictive covenant, *** and, The only question here, then, is whether there has been such a change of circumstances as would make it inequitable to enforce

> the restrictive covenant, (Record 162) *** and, When thus construed in accordance with the clear intent of the parties (and this could only be obtained from the record and the evidence) it is clear that there has been no such change in circumstances as would make it inequitable to enforce the covenant. (Record 163) *** and, For the reasons stated, it was error to decree that the restrictive covenant in question was void and unenforceable," (Record 164).

And Judge Hobson in his concurring Opinion stated in his Opinion:

> "The only question upon this appeal which has not previously been adjudicated, and which I consider as deserving of our consideration, is whether there is in this record competent substantial evidence which sustains the finding of fact made by the Special Master and confirmed by the Chancellor." (Record 165).

And in the concurring Opinion the said Judge further stated:

> "This finding (of fact) was approved by the Chancellor, but my examination of the transcript of testimony convinces me that there is no competent substantial evidence in the record to sustain the finding in effect that all of this property which may ever be needed for a public highway or public street or public sidewalk has already been utilized by the State of Florida." (Record 165).

(2)

UNDER THE ABOVE CIRCUMSTANCES IS THE LAW OF THE CASE, AS DETERMINED BY THE STATE COURT, A FEDERAL QUESTION?

This Court, in Spector Motor Service v. McLaughlin 65 Sup. Ct. 363, 323 U.S. 471, 89 Law Ed. 398 and Madden v. Commonwealth of Kentucky 60 Sup. Ct., 406, 309 U.S. 83, 84 Law Ed. 500, confirmed, ratified and approved the law of this Court theretofore announced that the decision of a State Court is binding upon this Court insofar as the State Law is concerned, and that this Court will accept interpretations of the State Law as adjudicated by the final Appellate Court of the State.

The rule being, in the absence of Statute, the phrase "law of the case" as applied to the effect of previous orders on the latter action of the court rendering them in the same case, merely expresses the practice of courts generally to refuse to reopen what has been decided, and not a limit to their power. Rosewell E. Messinger v. Peter Anderson 56 Law Ed. 1152, 225 U. S. 436, and Southern Railroad Co. v. Cliff 260 U. S. 316, 67 Law Ed. 283, 43 Sup. Ct., 126; 67 ALR Notes Pgs. 1393 to 1396. And Judge Cordozo in the case of the Great Northern R.R. Co. v. Sunburst Oil & Refining Co., 77 Law Ed. 366, text 377, 287 U. S. 363, text 367, said:

> "The common law as administered by her judges ascribes to the decisions of her highest court a power to bind and loose that is unextinguished, for intermediate transactions, by a decision overruling them. As applied to such transactions

> we may say of the earlier decision that it has not been overruled at all. It has been translated into a judgment of affirmance and recognized as law anew. Accompanying the recognition is a prophecy, which may or may not be realized in conduct, that transactions arising in the future will be governed by a different rule. If this is the common law doctrine of adherence to precedent as understood and enforced by the courts of Montana, we are not at liberty, for anything contained in the Constitution of the United States, to thrust upon those courts a different conception either of the binding force of precedent or of the meaning of the judicial process."

THE SUPREME COURT OF THE UNITED STATES IS WITHOUT JURISDICTION IF THERE APPEARS A NON-FEDERAL QUESTION WHICH IS SUFFICIENT IN ITSELF TO SUSTAIN THE JUDGMENT

It is the settled law of this Court that Certiorari will not lie unless a Federal question is presented, and this law is so fundamental that it is not necessary to cite authorities. It is also the settled law of this Court that a decision of the State Court, resting on grounds of State procedure, does not present a Federal Question; and this also is so fundamental that we do not deem it necessary to burden the Court with numerous citations. See U. S. C. A. 28 Para. 1257, Page 147, Note 69.

The record discloses that there is presented in this cause no Federal Constitutional Question and this Court in Seaboard Airlines R.R. v. Watson, 77 Law Ed. 180, 53 Sup. Ct., 32 and numerous earlier decisions, has held:

"That where no substantial constitutional question is presented the cause should be dismissed."

And, even if a Constitutional Question is raised, and that the judgment of the Lower Court rests upon an adequate non-federal question, then the Petition for Certiorari should be denied. Young v. Regen 69 Sup. Ct. 1073, 337 U. S. 235, 93 Law Ed. 1333.

And, even if the authorities cited by Petitioner to sustain his Petition with reference to "the law of the case" were at one time the law of the State of Florida, such position cannot be sustained, as the judgment complained of was entered subsequent to the rendition of the decision of the Supreme Court of Florida in Ball v. Yates, supra. The law of this Court is that this Court will not take jurisdiction upon Petition for Certiorari or Appeal if there is involved one a Federal question and the other, a non-Federal question, if the grounds independent of the Federal question is sufficient in itself to sustain the judgment. Radio Station WOW Inc. v. Johnson 89 Law Ed. 2092, 326 U. S. 120-135; Simmerman v. Nebraska 116 U. S. 54, 29 Law Ed. 529, 6 Sup. Ct. 333; Godchaux Co. v. Estopinal 251 U. S. 179, 64 Law Ed. 213, 40 Sup. Ct. 116; American Surety Co. v. Baldwin 287 U. S. 156, 77 Law Ed. 231, 53 Sup. Ct. 98; 86 ALR 298.

The Supreme Court of Florida, on second appeal, rendered its decree (Record 160) that it was error for the Lower Court to decree that the restrictive covenant in question was void and unenforceable, thereby basing its decision upon the testimony offered by the Petitioner and the Respondent, and that the Petitioner had full opportunity to be heard upon all questions involving the

status, validity or invalidity of the condition or equitable servitude of said deed; and such opinion was rendered in conformity with the terms and conditions of the retained jurisdiction appearing in the Decree entered by the Lower Court on April 6th, 1951 (Record 39) and confirmed by the Supreme Court of the State of Florida by its affirmance of December 11th, 1951 (Record 52).

Respondent respectfully submits that the Petition for Certiorari should be denied.

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